

**FINAL REPORT
OF THE
NATURAL RESOURCES
STUDY COMMITTEE**



**Indiana Legislative Services Agency
200 W. Washington St., Suite 301
Indianapolis, Indiana 46204-2789**

November 2004

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Natural Resources Study Committee

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November 1, 2004

FINAL REPORT

Natural Resources Study Committee

I. STATUTORY DIRECTIVE

IC 2-5-5-1 established the Natural Resources Study Committee. IC 2-5-5-3 directs the Committee to study laws relating to the Department of Natural Resources (DNR) to the end that legislation may be proposed to better serve the citizens of Indiana. The Committee is to consult with representatives of the DNR and citizens of Indiana for the purpose of proposing legislation to accomplish the following:

- (1) repeal of outmoded or unnecessary laws;
- (2) consolidation and restatement of existing laws;
- (3) improved coordination of state laws with federal laws; and
- (4) addition or amendment of laws that will further the purpose for which the DNR was created. (IC 2-5-5-3)

The Committee is to advise and assist the DNR in programming its activities and in developing a long-range plan for land acquisition, capital improvement, and development of facilities. IC 14-25-7 directs the Committee to oversee the Water Resource Management Program under 14-25-7-16.

II. INTRODUCTION AND REASONS FOR STUDY

The Natural Resources Study Committee met to carry out its statutory responsibilities under IC 2-5-5-3.2 and IC 14-25-7-16.

III. SUMMARY OF WORK PROGRAM

The Committee met four times during the 2003 interim. Meetings were held as follows:

- (1) July 27, 2004, at Fort Harrison State Park, Lawrence;
- (2) August 14, 2004, at Culver Cove, Culver;
- (3) August 15, 2004, at Culver Cove, Culver; and
- (4) October 5, 2004, at Fort Harrison State Park, Lawrence.

IV. SUMMARY OF TESTIMONY

The Committee heard testimony from DNR professionals, members of the General Assembly, representatives of various associations, private citizens, and other interested parties. An overview of the testimony is presented below.

Overview of the DNR. John Goss, DNR Director, provided an overview of the DNR activities. Thirty-five fee increases two years ago have generated about \$5-\$6 M that can be applied to the DNR operating budget. However, the DNR will revert approximately \$25-\$30 M to the state General Fund. The DNR has provided significant increases in lake patrol funding for local officers. New dollars are available for invasive plant control.

DNR Point-of-Sale Automated License Purchasing System. Matt Hopper, DNR Director of Legislative and Community Relations, John Ryan, DNR Director of Internal Audit, Marti Mitchell, Access Indiana, and Scott Manos, DNR Project Manager, demonstrated the web-based, point-of-sale purchasing system for DNR licenses. Equipment costs were \$870 per installation. The DNR provided existing vendors equipment free of charge; new vendors must provide a damage deposit. The automated system will save vendors money because they will no longer have to provide a bond in order to sell licenses.

Senior Discount Fishing Licenses. Glen Salmon, Director, Division of Fish and Wildlife, proposed a senior discount fishing license. In order for the state to receive federal reimbursement for fishing licenses sold in Indiana, the DNR must assess consumers a fee that will cover the costs of producing the license. A license costs the state \$2.25 to produce with \$0.75 remaining with the vendor. Net costs to seniors would equal \$3. Currently, the federal government reimburses the state \$6.60 for each license sold. Currently, individuals 60 through 64 pay \$14.25, while those 65 and over do not pay a fee. Paula Yeager, Indiana Wildlife Federation, and Dick Mercier, Indiana Sportsman's Roundtable, supported the proposal. The American Association of Retired Persons offered a letter of support.

Clean Water Indiana (CWI). Sherman Bryant, Indiana Association of Soil and Water Conservation Districts (IASWCD), provided an overview of Clean Water Indiana (CWI). The General Assembly created CWI to protect and enhance Indiana land, lakes, and rivers by reducing polluted storm water run-off in urban and rural areas from entering surface and ground water. Both rural and urban non-point source pollution include sediment, pathogens, pesticides, and nutrients. Several cities spend significant dollars to treat drinking water supplies to remove bacteria and reduce pesticide contamination to acceptable levels. The DNR Division of Soil Conservation CWI administered CWI under the direction of the State Soil Conservation Board. CWI was funded for one year with \$1M from the Build Indiana Fund. All 92 districts received at least one grant to implement local projects. In FY 03, \$84M in requests for conservation programs went unfunded.

The state has an opportunity to obtain up to \$8 in federal money for each \$1 state match as a part of the Conservation Reserve Enhancement Program (CREP). The USDA administers CREP, which is a voluntary program to make incentive payments to agricultural landowners for installing specific conservation practices. The USDA believed that the state did not have enough money to enter into a CREP agreement. However, due to pledges from private and public sources, the USDA agreed to enter into an agreement to provide matching funds for projects in the upper Tippecanoe, upper White River, and Pigeon Creek watersheds. Due to the current lack of state funding, the agreement with the USDA allows for only up to 7,000 acres. The IASWCD would like to request that the General Assembly find permanent dedicated funding for CWI. Garry Tom, IASWCD, supported funding for CWI, noting that over 400 bodies of water in the state are classified as "impaired," meaning activities such as swimming or eating fish from the water are discouraged. Gene Weaver, IASWCD, supported a permanent funding source for CWI. The ISWCD proposed the establishment of a permanent, dedicated CWI stewardship fund. Revenue for the fund could be generated with the implementation of one of the following options.

Option 1: Per Parcel Stewardship

Each real estate parcel would be assessed an annual fee. The rationale behind this option is that real estate and land use affect water quality. Also, most citizens would contribute. The fee could be collected when real estate taxes are collected. This fee could raise annually an estimated \$6M-\$8M.

Option 2: Sewer Assessment

Sewer users would be assessed a stewardship fee to fund CWI. Kansas and Maryland currently assess water user fees. Indiana could generate approximately \$62M annually using a sewer assessment. Water users and polluters would share in the responsibility to fund soil and water conservation. The fee could be assessed on sewer bills.

Option 3: Real Estate Transfer

A flat fee per real estate transaction would be assessed. Real estate and land use affect water quality, and the fee could be collected as part of the real estate closing fees. A \$50 fee per transfer would generate \$7.5M annually.

Option 4: Real Estate Parceling or Subdividing

A fee would be established when subdividing a tract of land. The amount of revenue that could be generated by this option is unknown.

Option 5: Fertilizer Use

The Office of the State Chemist currently collects a \$0.45 per ton fertilizer stewardship fee to fund its operations. An additional \$1 fee could be added to the existing fee. Kansas and Nebraska collect fees for fertilizer and pesticide use. Indiana could collect similar fees for farm and residential use. Revenue raised could be used in a cost share back to farmers for conversion to no-till and other best management practices. The residential rate could be higher at \$20 per ton given that the use represents a luxury as opposed to an economic need for residents. Use of fertilizer contributes to water quality problems.

Dick Mercier, Indiana Sportsmen's Roundtable, supported the per parcel option, noting the importance of CWI and the federal match. Bob Eddelman, Marion County SWCD, noted the value of providing technical assistance in respect to the use of pesticides on lawns and golf courses. Paula Yeager, Executive Director, Indiana Wildlife Federation, also supported a permanent, dedicated funding source for CWI.

The Committee agreed that CWI needed to have a permanent, dedicated funding source; however, the Committee did not recommend a specific funding option.

Issues Pertaining to Archeological Sites. Dr. Rick Jones, State Archeologist, explained the process used to preserve the 50,000 archeological sites in the state. Many sites have been disturbed. The Federal Highway Administration and the Indiana Department of Transportation (INDOT) have a partnership to create a GIS database that will be the repository for an inventory of the sites.

Rep. Matt Pierce proposed a "check before you dig" plan that would require individuals or businesses to contact via one 800 telephone number the DNR and utilities before digging. He proposed maintaining information about all sites in a database with a GIS map. Work-study students could input the data. He proposed establishing penalties for violations of the law pertaining to archeological sites. Additionally, he suggested creating a non-reverting, dedicated fund to allow grants that could be used to employ an archeologist to supervise the excavation of sites and to purchase equipment or pay for lodging expenses of volunteers. He noted that when landowners discover a site, the landowner must desist from further digging until the state approves continuation of the project. The time between the find and approval for continued digging can be extensive and discourage landowners from reporting. The open records law may also need to be adjusted to give DNR some flexibility if an archeologic find is discovered.

Bob McCullah, IUPUI-Ft. Wayne, supported the GIS project, noting that Indiana still has paper records whereas Kentucky is on-line. Melody Pope and George Mankowski, Glenn A. Black Lab of Archeology, Indiana University, Bloomington, supported the GIS database record enhancement.

Personal Flotation Devices and Personal Watercraft Passenger Limits. Jeff Wells, Director, DNR Division of Law Enforcement, supported the mandatory wearing of life jackets for children 12 and under as well as passenger limits on watercraft.

Taxable Marine Facilities. The DNR proposed a clarification in the law pertaining to “taxable marine facilities”.

Groundhog Exemption. Glenn Lange, DNR Chief of Wildlife, proposed repealing the groundhog exemption. By law the groundhog is not a wild animal. Poachers can claim to be hunting groundhogs. Allowing the DNR to regulate groundhogs would allow the DNR to use DNR funding and take action in case of disease.

Lake Management Workgroup Legislative Recommendations. John Goss, DNR Director, indicated that the DNR is adopting rules designed to regulate piers. Jim Ray, Chief, DNR Land and Water Conservation, explained how seawalls damage the natural habitat of the shoreline and decrease water quality. He proposed changes to statutes regarding seawalls. Pete Hippensteel, David Tyler, Tina Hissong, and Ralph Taylor, LMWG members, discussed problems with funneling and the management of shorelines. Pete Trone, Chair of the Culver Board of Zoning Appeals, suggested that the DNR notify local governments of permit hearings. Nat Noland, Glenn Air Association President, encouraged efforts to prevent additional funneling on Lake James. Nelson Becker, a citizen, encouraged grandfather provisions for existing facilities.

Work of the Citizen Advisory Council on Captive Cervids. Mr. Lange provided an overview of the work of the Citizen Advisory Council on Captive Cervids. The Council was composed of ten members who represented various interest groups. Mr. Lange suggested that more consensus on legislative recommendations could have been reached if the Council had had more time.

Don Blinzinger, Bose Treacy Associates, provided an overview of the history of deer farming. He noted that a core issue pertains to who owns captive deer. With respect to hunting deer behind a fence, he discussed a proposal that would allow for those in the business to remain in business and to be able to hand down the business to family members, but that the business could not be passed on beyond the family. Eddie Ray Borkholder highlighted aspects of the day-to-day business of deer farming. Deer that are sold are sold for breeding purposes or are sold as “shooters”.

Frank Keeton, Elk Breeders Association, provided an overview of elk farming. Markets for elk products include markets for velvet antler, elk meat, hard antler, trophy animals, and tourism. Elk are not regulated by the state. Dave Dimmich discussed the future of cervid farming and alternative agriculture. He noted that cervids are considered personal property by many state agencies, but that the DNR considers them wildlife. John Newsom, Indiana Farm Bureau (IFB), indicated that a majority of 300 members wanted deer to be recognized as livestock. Brigid O’Donoghue, United Special Sportsman Alliance Bio-Tec Research, Inc., explained the “Make a Wish” program that allows children to participate in hunting events. She has 80 hours of footage pertaining to the impact of CWD in deer.

Chuck Bauer, Izaak Walton League Board member, stated that the League is opposed to deer/elk farms for domestication and “canned hunts,” which violate the public trust and the true sport of a fair hunt. He noted that deer can be patterned using baiting. Deer belong to all citizens. Wild and captive deer must be separated in order to prevent the spread of disease in

the wild. Concentration of and the moving of deer increases chances for disease transmission. Imports of deer and elk should be banned, and the risks of diseases should be monitored. Doug Allman, Indiana Deer Hunters Association, explained that the Association does not support hunting behind high fences.

Paula Yeager, Executive Director, Indiana Wildlife Federation, opposed canned hunting, but did not oppose deer farming. Fifteen states have banned canned hunts. Other states have restrictions, such as Tennessee which does not allow private ownership of white tail deer. She was concerned about the spread of disease, noting that in 2001, Wisconsin spent \$12M trying to manage the CWD. Mr. Mercier stated that his organization does not support canned hunts or private ownership of white tail deer. Phil Ohmit, Hoosier Conservation Alliance (HCA), indicated that if hunting is allowed behind fences, the DNR should regulate the hunt and develop the rules. However, the HCA is opposed to canned hunting because the deer do not have the right to ingress and egress.

Gary Haynes, Board of Animal Health, stated that CWD was found in the wild herd in Wisconsin in 2001. CWD is in the same family as mad cow disease. In April 2002, the Board prohibited the import of cervids for over one year. The Board has tested for CWD in various parts of the state, but has not found the disease to date. Jack Hyden, Indiana Beaglers Alliance, read emails in support of high-fenced hunting. Glenn Roberts, Culver farmer, noted that hunters have shot his equipment and buildings, and that guns have been pointed at members of his family.

Director Goss concluded that about 300,000 hunting licenses are sold each year. The DNR is adding acres available for hunting. There is no shortage of hunting opportunities. Currently, too many deer abide in the state parks. The DNR is committed to the doctrine of fair chase.

Floodway Control Act. Tim Maloney, Hoosier Environmental Council (HEC), provided an overview of the Flood Control Act. He noted that the National Association of Floodplain Managers reported that nationally annual flood damage totaled \$6B. Federal insurance payments to Indiana in 2003 were \$38M with \$6M in 2004. In addition to repair costs caused by flooding, destruction of floodplains by development or fill results in a loss of water run-off buffering capacity which allows more pollutants to enter waterways. Without natural buffers studies show that water run-off in developed urban areas increases by a factor of up to 16. Development and farming practices have reduced natural buffers around streams by nearly 70%. Loss of floodplain also reduces wildlife habitat. Purdue University land-use experts indicate that land development is the big source of flooding problems.

Recommendations include not allowing fill in floodways beyond a de minimus amount, with exceptions for public bridge crossings, access roads, and small dams. Flood conveyance channels or other structural alterations should not be allowed to offset the hydraulic effects of obstructions in floodways, with exceptions for public works flood control projects. Permit reviews should consider cumulative effects. Waste or used materials should not be permitted for use in bank stabilization. Incentives for landowners to protect riparian buffers and floodways should also be increased. Clarke Kahlo, HEC, stated that fill projects have affected flooding of the north White River since 1997. Elizabeth Mahoney stated that her house in Broad Ripple in a floodway fringe flooded three times last year. Nonetheless, the city is allowing other development in the floodway fringe.

Hunting and Fishing in Charlestown State Park. Sen Lewis stated that a group of sportsmen have asked if part of the Park could be designated as a hunting and fishing area. A law would be needed to transfer the land from a state park to a fish and wildlife area.

Deer Hunting. Mr. Davis provided an update on the rules governing deer hunting.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Committee made the following legislative recommendations.

PD 3409 repeals a provision exempting groundhogs from application of state fish and wildlife laws.

The Committee voted to recommend PD 3409 with a vote of six ayes and one nay.

PD 3437 authorizes the donation, exchange, and sale of items contained in the Division of State Museums and Historic Sites' collection. The proposal changes the organization of the Division's board of trustees. It establishes the Historic Site Fund and requires money generated by a historic site to be deposited in the fund. At least 51% of the fees collected from a particular historic site are to be used for educational programs at the historic site and for maintenance and operation of the historic site.

The Committee voted to recommend PD 3437 with a vote of seven ayes and no nays.

PD 3457 increases from \$50,000 to \$75,000 the cost of projects that the DNR may perform without awarding a public works contract.

The Committee voted to recommend PD 3457 with a vote of seven ayes and no nays.

PD 3455 adopts the Pest Control Compact and establishes procedures to obtain funds from the Pest Control Insurance Fund. The proposal also makes technical corrections.

The Committee voted to recommend PD 3455 with a vote of seven ayes and no nays.

PD 3456 discontinues the fishing license exemption for residents who are at least 65 years of age. The proposal establishes a senior fishing license for residents who are at least 60 years of age. It discontinues issuance of lifetime hunting, fishing, and trapping licenses, but retains the validity of lifetime licenses already issued.

The Committee voted to recommend PD 3456 with a vote of five ayes and one nay.

PD 3473 makes corrections to laws concerning off-road vehicles and snowmobiles. It makes possessing an off-road vehicle or snowmobile with an altered or defaced vehicle number a Class B misdemeanor. It also makes failure of a dealer to maintain rented vehicles in a safe operating condition or to maintain liability insurance a Class C infraction (instead of a Class B misdemeanor).

The Committee voted to recommend PD 3473 with a vote of six ayes and no nays.

PD 3478 allows bird hunting stamps in an electronically generated form. The proposal allows commemorative bird hunting stamps to be sold. It provides that hunting and fishing licenses and stamps expire on March 31. This proposal also requires electronically obtained licenses to be signed to be valid. The proposal also amends procedures to obtain a duplicate license.

The Committee voted to recommend PD 3478 with a vote of six ayes and no nays.

PD 3439 requires a child less than 13 years of age to wear a personal flotation device while on a boat. The proposal requires a boat or personal watercraft that is towing a person to have enough space for the driver, observer, and person being towed.

The Committee voted to recommend PD 3439 with a vote of six ayes and no nays.

PD 3440 extends the definition of "taxable marine facility" for purposes of motor fuel taxes to facilities located on any body of water under the state's jurisdiction.

The Committee voted to recommend PD 3440 with a vote of six ayes and no nays.

PD 3476 requires that a person who performs certain activities concerning water levels, shorelines, and lake beds along a lake or within ten feet of a lake obtain a permit from the DNR. The proposal directs the Natural Resources Commission to adopt rules. It makes conforming changes. This proposal also repeals laws concerning permits to change water levels, shorelines, and lake beds.

The Committee voted to recommend PD 3476 with a vote of six ayes and no nays.

Rep Matt Pierce presented **PD 3480** which defines "artifact" as a human made feature or object that is more than 125 years old. The proposal requires certain utility companies to have a development plan (plan). The proposal requires a plan before excavating or covering ground within 100 feet of a cemetery or burial ground. It requires a person who disturbs buried human remains or artifacts to cease disturbing the area within 100 feet of the remains or artifacts. This proposal also establishes a Class A infraction for violating certain duties concerning the unintentional discovery of artifacts. The proposal also allows confidentiality of location information of historical or archeological sites. It also allows certain persons to accompany a conservation officer to investigate a violation of a historic preservation and archeology law. It establishes a fund to assist private homeowners who accidentally discover an artifact, a burial object, or human remains and need assistance to comply with a plan. This proposal allows the court to order restitution for certain costs related to the violation of the historic preservation and archeology law. The proposal establishes a Class D felony for possession of looted property and a Class C felony if the property is worth more than \$100,000. It provides that a disinterment under a plan is exempt from other disinterment procedures. The proposal also establishes the historic and archeological site data base advisory task force. It makes conforming changes.

The Committee voted to recommend PD 3480 with a vote of six ayes and no nays.

Final Report. The Committee voted to adopt the final report with a vote of six ayes and no nays.

WITNESS LIST

Doug Allman, Indiana Deer Hunters Association
Chuck Bauer, Izaak Walton League Board Member
Nelson Becker, Citizen
Eddie Ray Borkholder, Deer Farmer
Don Blinzinger, Bose Treacy Associates
Sherman Bryant, Indiana Association of Soil and Water Conservation Districts (IASWCD)
John Davis, Deputy Director, DNR
Dave Dimmich, Citizen
Bob Eddelman, Marion County SWCD
Paul Ehret, DNR Deputy Director
John Goss, Director, DNR
Gary Haynes, Board of Animal Health,
Pete Hippensteel, Lake Management Workgroup
Tina Hissong, Lake Management Workgroup
Matt Hopper, DNR Director of Legislative Relations
Jack Hyden, Indiana Beagler's Alliance
Rick Jones, State Archeologist, DNR
Clarke Kahlo, Hoosier Environmental Council (HEC)
Frank Keeton, Elk Breeders Association
Glenn Lange, DNR Chief of Wildlife
Elizabeth Mahoney, Citizen, Broad Ripple
Tim Maloney, HEC
George Mankowski, Glenn A. Black Lab of Archeology, Indiana University, Bloomington
Scott Manos, DNR License Point of Sale Project Manager
Bob McCullah, IUPUI-Ft. Wayne
Dick Mercier, Indiana Sportsmen's Roundtable
Marti Mitchell, Access Indiana
John Molitor, Indiana Historical Society and Indiana Historic Landmarks Foundation
Phil Ohmit, Hoosier Conservation Alliance
Charlie O'Neal, Indiana Wildlife Federation
John Newsom, Indiana Farm Bureau
Nat Noland, Glenn Air Association President
Brigid O'Donoghue, United Special Sportsman Alliance Bio-Tec Research
The Honorable Matt Pierce, State Representative, Indiana General Assembly
Melody Pope, Glenn A. Black Lab of Archeology, Indiana University, Bloomington
Captain Michael Porteus, Supervisor, Records and Communications Sections, DNR
Jim Ray, Chief, DNR Land and Water Conservation
Glenn Roberts, Citizen, Culver
John Ryan, DNR Director of Internal Audit
Glen Salmon, Director of the DNR Division of Fish and Wildlife
Ralph Taylor, Lake Management Workgroup
Garry Tom, IASWCD
Pete Trone, Chair of the Culver Board of Zoning Appeals
David Tyler, Lake Management Workgroup
Dr. Robert Waltz, Director, DNR Division of Entomology and Plant Pathology
Gene Weaver, IASWCD
Jeff Wells, Director, DNR Division of Law Enforcement
Paula Yeager, Executive Director, Indiana Wildlife Federation